

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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SILVON S. SIMMONS,

Plaintiff,

vs.

**ATTORNEY DECLARATION  
IN OPPOSITION TO CITY  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

**17-CV-6176-FPG-MWP**

JOSEPH M. FERRIGNO, II, SAMUEL  
GIANCORSIO, MARK WIATER,  
CHRISTOPHER MUSCATO, ROBERT  
WETZEL, MICHAEL L. CIMINELLI,  
JOHN DOES 1-20, CITY OF ROCHESTER,  
SHOTSPOTTER, INC., SST, INC.,  
JOHN DOES 21-30 and PAUL C. GREENE,

Defendants.

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CHARLES F. BURKWIT, declares the following under penalty of perjury:

1. I am an attorney duly licensed to practice law before the Courts of New York and this Court. I am the principal in Burkwit Law Firm, PLLC, the attorneys for Plaintiff Silvon S. Simmons (hereinafter "Plaintiff"), and as such, I am fully familiar with the facts of this case and with all prior proceedings.

2. This Declaration is submitted in opposition to the motion of the City Defendants for partial summary judgment dismissing the remainder of the Seventh (Failure To Intervene against Defendant Muscato - 42 USC §1983), Eighth (Failure To Implement Policies, Customs, Practices against City of Rochester/Municipal Liability – 42

USC §1983), and Ninth (Supervisory Liability/Monell against City of Rochester and Defendant Ciminelli) Causes of Action and granting qualified immunity to officers Ferrigno and Giancursio as the First Cause of Action for False Arrest (42 USC 1983). This was the relief the City Defendants requested in their Notice of Partial Motion For Summary Judgment. (Doc-133).

3. In their Memorandum of Law (Doc. 132-3), the City Defendants also move to dismiss the Plaintiff's Third Cause of Action against the named parties/entities for conspiracy to violate civil rights (42 USC § 1983).

4. For the reasons set forth in Plaintiff's Memorandum of Law, submitted herewith, summary judgment as to these causes of action and granting qualified immunity to officers Ferrigno and Giancursio as to the First Cause of Action is not warranted.

5. Numerous deposition extracts and exhibits, as cited in the Plaintiff's counterstatement of material facts, are relevant to this motion. Those depositions and exhibits were as follows:

- a. On May 3, 2021, Detron Parker was deposed. Relevant excerpts of his EBT testimony are attached hereto as Exhibit A.
- b. On July 19, 2021, Flamur Zenelovic was deposed. Relevant excerpts of his EBT testimony are attached hereto as Exhibit B.
- c. On October 5, 2021, Joseph Ferrigno was deposed. Relevant excerpts of his EBT testimony are attached hereto as Exhibit C.
- d. On March 9, 2021, Robert Bresler was deposed. Relevant excerpts of his EBT testimony are attached hereto as Exhibit D.

- e. On May 3, 2021, Dawn Darragh was deposed. Relevant excerpts of her EBT testimony are attached hereto as Exhibit E.
- f. Attached hereto as Exhibit F are nine (9) photographs taken by Investigator Amy Bauer and which were marked as Bauer Exhibit 2 during her June 29, 2021 deposition.
- g. Attached hereto as Exhibit G are thirty-four (34) photographs which were marked as Ferguson Exhibit 1 during Officer Eric Ferguson's June 29, 2021 deposition.
- h. On July 16, 2021, Samuel Giancursio was deposed. Relevant excerpts of his EBT testimony are attached hereto as Exhibit H.
- i. On June 29, 2021, Christopher Muscato was deposed. Relevant excerpts of his EBT testimony are attached hereto as Exhibit I.
- j. On September 10, 2021, William Gallagher was deposed. Relevant excerpts of his EBT testimony are attached hereto as Exhibit J.
- k. On July 15, 2021, Patrick Giancursio was deposed. Relevant excerpts of his EBT testimony are attached hereto as Exhibit K.
- l. On June 29, 2021, Amy Bauer was deposed. Relevant excerpts of her EBT testimony are attached hereto as Exhibit L.
- m. On July 16, 2021, William Wagner was deposed. Relevant excerpts of his EBT testimony are attached hereto as Exhibit M.
- n. On February 2, 2022, Edward Morrison was deposed. Relevant excerpts of his EBT testimony are attached hereto as Exhibit N.

- o. On June 29, 2021, Eric Ferguson was deposed. Relevant excerpts of his EBT testimony are attached hereto as Exhibit O.
- p. On September 14, 2021, Kenneth Coniglio, Jr. was deposed. Relevant excerpts of his EBT testimony are attached hereto as Exhibit P.
- q. On April 12, 2021, Eric Freemesser was deposed. Relevant excerpts of his EBT testimony are attached hereto as Exhibit Q.
- r. On April 12, 2021, Ellyn Colquhoun was deposed. Relevant excerpts of her EBT testimony are attached hereto as Exhibit R.
- s. On March 2, 2021, Mark Wiater was deposed. Relevant excerpts of his EBT testimony are attached hereto as Exhibit S.
- t. On November 20, 2020, Robert Bresler was deposed. Relevant excerpts of his EBT testimony are attached hereto as Exhibit T.
- u. On November 25, 2020, Paul Greene was deposed. Relevant excerpts of his EBT testimony are attached hereto as Exhibit U.
- v. Mr. Greene had testified at the trial of *People v. Simmons*. Relevant excerpts of his trial testimony are attached hereto as Exhibit V.
- w. On November 19, 2020, Ralph Clark was deposed, Relevant excerpts of his EBT testimony are attached hereto as Exhibit W.
- x. Attached hereto as Exhibit X is a Shotspotter Detailed Forensic Report which was marked as Clark Exhibit 3 during Ralph Clark's November 19, 2020 deposition.
- y. On February 25, 2021, Robert Wetzel was deposed, Relevant excerpts of his EBT testimony are attached hereto as Exhibit Y.

z. On June 7, 2022, Michael Ciminelli was deposed, Relevant excerpts of his EBT testimony are attached hereto as Exhibit Z.

aa. On June 14, 2022, Laszlo Tordai was deposed, Relevant excerpts of his EBT testimony are attached hereto as Exhibit AA.

6. In accordance with 28 U.S.C. §1746, I declare under the penalty of perjury that the foregoing is true and correct.

Dated: February 6, 2023

s/Charles F. Burkwit, Esq.

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